

to the provision of electronic publishing" to a separated affiliate, electronic publishing joint venture, or affiliate may use, disclose, or permit access to CPNI in connection with those services only if the CPNI is made available, on nondiscriminatory terms, to all unaffiliated electronic publishers who have requested such services? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(A) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

Preliminarily, "inbound telemarketing or referral services related to the provision of electronic publishing" do not necessarily include the use or disclosure of CPNI. For the reasons explained in the Response to Question 8, marketing does not depend on the use of CPNI, because marketing information can be provided to a customer without requiring or entailing information about the customer's usage of a BOC's telecommunications service. Similarly, a customer interested in electronic publishing can be referred to the BOC's separated affiliate, electronic joint venture or affiliate without accessing the customer's CPNI. Section 274(c)(2)(A) expressly requires that a BOC that provides marketing on an inbound call or referral services related to electronic publishing must make such services available to all electronic publishers on request, on nondiscriminatory terms. In the Electronic Publishing Order (¶¶ 149, 152), the Commission construed this to mean that if the customer does not ask for a specific BOC referral, the BOC must provide the names of all unaffiliated electronic publishers, as well as its own, in random order.

If a BOC intends to access a customer's CPNI as part of an inbound telemarketing contact or referral service for

the benefit of its separated affiliate, electronic publishing joint venture or affiliate (other than based on the customer's affirmative written consent obtained by the non-BOC entity), it would have to make the CPNI available to any unaffiliated electronic publisher on the same terms. If a BOC obtains verbal customer consent for use of CPNI in an inbound telemarketing or referral context, it must simultaneously solicit blanket consent to disclose the CPNI to any unaffiliated electronic publisher, post the availability of the CPNI and not use or disclose the CPNI for the benefit of its separated affiliate, electronic publishing joint venture or affiliate until a reasonable waiting period (such as 10 days) has elapsed so that third party electronic publishers would have an opportunity to access the CPNI. See Responses to Questions 1, 4, 6 and 10.

These nondiscrimination duties stem from section 274(c)(2), which requires "nondiscriminatory" terms for permissible joint activities between a BOC and its separated affiliate, electronic joint venture, affiliate, unaffiliated electronic publisher, or teaming or business arrangements. In addition, they are inherent in section 274(b)'s requirement that the separated affiliate or electronic joint venture be "operated independently" from the BOC and section 274(b)(3)'s requirement that such separated affiliate or joint venture and the BOC with which it is affiliated "carry out transactions . . . in a manner consistent with such independence, . . . pursuant to written contracts or tariffs" Moreover,

as the Commission has determined, if a BOC elects to provide electronic publishing through its section 272 affiliate, it must comply with the requirements of both sections 272 and 274 and, if there is a conflict, follow the more stringent requirement. Electronic Publishing Order, ¶ 110-115.

(ii). SECTION 274(c)(2)(B) - TEAMING OR BUSINESS ARRANGEMENTS

15. To the extent that basic telephone service information is also CPNI, should section 274(c)(2)(B) be construed to mean that a BOC engaged in an electronic publishing "teaming" or "business arrangement" with "any separated affiliate or any other electronic publisher," may use, disclose, or permit access to basic telephone service information that is CPNI in connection with that teaming or business arrangement only if such CPNI is also made available on a nondiscriminatory basis to other teaming or business arrangements and unaffiliated electronic publishers? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(B) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

Section 274(c)(2)(B) explicitly states that a BOC may engage only in "nondiscriminatory teaming or business arrangements." Unless the separated affiliate or other electronic publisher that is a party to the BOC's teaming or business arrangement obtained affirmative written consent for use of BOC CPNI (as any unaffiliated third party could do under section 222(c)(2)), the arrangement would be inherently discriminatory unless the BOC disclosed the CPNI to unaffiliated third parties based on whatever approval was used for the electronic publishing teaming or business arrangement. As previously indicated, the best remedy is not to require the BOC to broker widespread disclosure of CPNI, but rather to require the non-BOC entity to the teaming or business

arrangement to seek affirmative written consent for use of BOC CPNI. See Response to Question 14, and see also Responses to Questions 1, 4, 6 and 13.

16. If section 222(c)(2) permits a BOC to disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request," does section 274(c)(2)(B) require that the entities, both affiliated and non-affiliated, engaged in section 274 teaming or business arrangements with the BOC be treated as third parties for which the BOC must have a customer's affirmative written request before disclosing CPNI to such entities?

Yes. See Responses to Questions 14 and 15, and see also Responses to Questions 1, 2, 4 and 6.

(iii). SECTION 274(c)(2)(C) - ELECTRONIC PUBLISHING JOINT VENTURES

17. Should section 274(c)(2)(C) be construed to mean that an electronic publishing joint venture be treated as a third party for which the BOC must have a customer's approval, whether oral, written, or opt-out, before disclosing CPNI to that joint venture or to joint venture partners?

Yes. See Responses to Questions 14, 15 and 16, and see also Responses to Questions 1, 2, 4, and 6.

C. CUSTOMER APPROVAL

(i). SECTION 274(c)(2)(A) - INBOUND TELEMARKETING OR REFERRAL SERVICES

18. Must a BOC that is providing inbound telemarketing or referral services to a "separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher" under section 274(c)(2)(A) obtain customer approval pursuant to section 222(c) before using, disclosing, or permitting access to CPNI on behalf of such entities? If so, what forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use

a customer's CPNI on behalf of each of these entities in this situation? What impact, if any, does section 222(d)(3) have on the forms of customer approval in connection with section 274(c)(2)(A) activities?

Even apart from the nondiscrimination duties of a BOC, under AT&T's reading of section 222(c), carriers in general are not permitted to use CPNI for marketing of a stand-alone non-telecommunications service (such as an electronic publishing service) absent customer approval. Although AT&T believes the use of opt-out approval and oral approval when consent is required is consistent with section 222(c)(1),²⁰ to implement a BOC's nondiscrimination duty, affirmative written consent best balances customer privacy and competitive concerns, because that is the type of consent a third party electronic publisher would need to access a customer's BOC CPNI. If the BOC uses some other form of customer approval, it must allow third party electronic publishers to gain access to BOC CPNI based on that same form of customer approval.

Section 222(d)(3) does not alter the BOC's fundamental nondiscrimination duty. Section 222(d)(3) allows carriers to obtain customer approval to use CPNI on an inbound call from the customer, even if the customer had previously declined to give consent for use/disclosure of CPNI or if the carrier had not previously solicited the customer's consent. In essence, what section 222(d)(3) does is give the carrier an opportunity to make a referral or market to the customer based

²⁰ See AT&T Comments, filed June 11, 1996, at 12-16.

on CPNI (given the customer's apparent interest in having contacted the carrier) so long as the customer approves such use of CPNI during the call. However, section 222(d)(3) does not allow a BOC to use an inbound customer contact in a discriminatory fashion, i.e., to make a referral to or market the electronic publishing services of its separated affiliate, electronic publishing joint venture or affiliate without giving third party electronic publishers access to the CPNI on the same terms and at the same time. The steps a BOC must take to fulfill its nondiscrimination duty in an inbound customer contact are detailed in the Response to Question 14.

19. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its separated affiliate or electronic publishing joint venture also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers when it provides such a service for its section 274 separated affiliates, electronic publishing joint ventures, or affiliates under section 274(c)(2)(A) with regard to the solicitation of a customer's approval during a customer-initiated call? What specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 274 separated affiliates or electronic publishing joint ventures or affiliates over unaffiliated entities? If the customer approves disclosure to both the BOC's section 274 separated affiliates or electronic publishing joint ventures or affiliates and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 274 separated affiliates or electronic publishing joint ventures or affiliates?

Yes. If a BOC solicits customer approval on behalf of its separated affiliate (or any of the other relationships for electronic publishing permitted under section 274), it must offer an "approval solicitation service" to unaffiliated third parties, otherwise it would be discriminating in favor

of its affiliated entity. See Responses to Questions 14 and 18, and see also Responses to Questions 1, 4 and 6.

20. To the extent that sections 222(c)(1) and 222(d)(3) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its section 274 separated affiliate, electronic publishing joint venture, or affiliate under section 274(c)(2)(A)? If, for example, a BOC may disclose CPNI to its section 274 separated affiliate pursuant to the customer's oral or opt-out approval, is the BOC required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?

Yes. See Responses to Questions 14, 15 and 18, and see also Responses to Questions 1, 4 and 6.

(ii). SECTION 274(c)(2)(B) - TEAMING OR BUSINESS ARRANGEMENTS

21. Must a BOC, that is engaged in a teaming or business arrangement under section 274(c)(2)(B) with "any separated affiliate or with any other electronic publisher," obtain customer approval before using, disclosing, or permitting access to CPNI for such entities? What forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of these entities in this situation?

Yes. See Responses to Questions 14, 15 and 18, and see also Responses to Questions 1 and 4.

22. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of any of its teaming or business arrangements under section 274(c)(2)(B) also offer to solicit that approval on behalf of other teaming arrangements and unaffiliated electronic publishers? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers and teaming arrangements when it provides such a service for any of its teaming or business arrangements under section 274(c)(2)(B)? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its electronic publishing teaming or business arrangements over unaffiliated entities? If the customer approves disclosure to both the BOC's electronic publishing teaming or business arrangements and unaffiliated entities, must a BOC provide the

customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its electronic publishing teaming or business arrangements?

Yes. See Responses to Questions 6, 14 and 19.

23. To the extent that sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its teaming or business arrangements under section 274(c)(2)(B)? If, for example, a BOC may disclose CPNI to a section 274 separated affiliate with which the BOC has a teaming arrangement pursuant to the customer's oral or opt-out approval, is the BOC likewise required to disclose CPNI to unaffiliated electronic publishers or teaming arrangements upon obtaining approval from the customer pursuant to the same method?

Yes. See Responses to Questions 14, 15 and 18, and see also Responses to Questions 1 and 4.

D. OTHER ISSUES

24. Does the seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 274 separated affiliate or electronic publishing joint venture constitute a "transaction" under section 274(b)(3)? If so, what steps, if any, must the BOC and its section 274 separated affiliate or electronic publishing joint venture take to comply with the requirements of section 274(b)(3) for purposes of CPNI?

Yes, a BOC's seeking of customer approval to use, disclose or permit access to CPNI for or on behalf of its separated affiliate or electronic publishing joint venture constitutes a "transaction" under section 274(b)(3). The compliance steps a BOC must take under section 274(b)(3) are the same as those under section 272(b)(5), which are described in the Response to Question 10.

25. Please comment on any other issues relating to the interplay between sections 222 and 274.

26. Please propose any specific rules that the Commission should adopt to implement section 222 consistent with the provisions of section 274.

AT&T suggests the following rules to reflect the interplay between sections 222 and 274 of the 1996 Act:

(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the separated affiliate, electronic publishing joint venture, or teaming or business arrangement under section 274 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 274 separated affiliate, electronic publishing joint venture, or teaming arrangement itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI.

(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement, the BOC must simultaneously seek such authorizations on behalf of such entity and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture,

teaming or business arrangement until the transaction has been posted and a 10-day waiting period has elapsed.

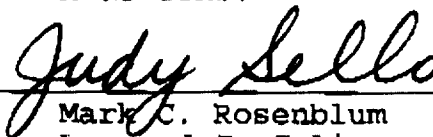
CONCLUSION

The Commission should construe sections 222, 272 and 274 of the 1996 Act as suggested herein, so as to preserve legitimate consumer privacy interests and protect fair competition.

Respectfully submitted,

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